

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



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**Court of Appeals, District of Columbia**

**JANUARY TERM, 1901.**

**No. 1042.**

**57**

**No. 6, SPECIAL CALENDAR,**

**JOHN B. SANBORN, APPELLANT,**

**vs.**

**CHARLES A. MAXWELL AND GEORGE S. CHASE, UNDER  
THE FIRM NAME OF "MAXWELL AND CHASE."**

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA**

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**FILED JANUARY 3, 1901.**

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*vs.*

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### INDEX.

	Original.	Print.
Caption.....	<i>a</i>	1
Bill.....	1	1
Exhibit A to bill—(Agreement to arbitrate).....	12	8
B to bill—(Award of arbitrators)....	14	8
Restraining order.....	14	9
Answer of Charles King.....	16	10
Motion to dissolve restraining order.....	25	15
Motion to amend bill.....	26	16
Leave to amend bill granted.....	29	17
Amended bill.....	30	18
Exhibit A to amended bill—(See page 12) ..	42	25
B to amended bill—(See page 14).....	42	25
C to amended bill—(Letter from J. B. Sanborn to Maxwell & Chase, June 7, 1899).....	43	25
Motion for appointment of receiver.....	45	26
Order appointing receiver .....	46	26

	Original.	Print
Memorandum: Bond of receiver filed .....	47	27
Motion to vacate order appointing receiver.....	47	27
Motion to vacate order appointing receiver overruled.....	48	28
First report of receiver.....	49	28
Demurrer of John B. Sanborn to amended bill.....	50	29
Second report of receiver .....	52	30
Demurrer overruled .....	53	31
Allowance of appeal by Court of Appeals.. . . .	54	31
Citation.....	55	32
Memorandum: Appeal bond filed.....	56	32
Clerk's certificate.....	57	32

# In the Court of Appeals of the District of Columbia

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JOHN B. SANBORN, Appellant, }  
vs. } No. 1042.  
CHARLES A. MAXWELL ET AL. }

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a Supreme Court of the District of Columbia.

CHARLES A. MAXWELL ET AL. }  
vs. } No. 20673. In Equity.  
JOHN B. SANBORN ET AL. }

UNITED STATES OF AMERICA, }  
District of Columbia, } ss :

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit :

1 *Bill of Complaint and Exhibits.*

Filed Jul- 24, 1899.

In the Supreme Court of the District of Columbia.

CHARLES A. MAXWELL and GEORGE S. CHASE, }  
under the Firm Name of "Maxwell & }  
Chase," Complainants, } Equity. No 20673,  
vs. } Docket 47.  
JOHN B. SANBORN and CHARLES KING, under }  
the Firm Name of "Sanborn & King," }  
Defendants. }

To the supreme court of the District of Columbia, holding an equity court.

The complainants state as follows :

1st. That they are attorneys and counsellors at law, citizens of the United States and residents of the District of Columbia, and lately doing business under the firm name and style of "Maxwell & Chase," and bring this suit in their own right.

2nd. That the defendants, John B. Sanborn and Charles King, are both citizens of the United States, said King being a citizen of the District of Columbia, and said John B. Sanborn being a citizen and resident of St. Paul, Minnesota, and were formerly partners in

the practice of law in the city of Washington, District of Columbia, and are sued in their own right.

3rd. That in the year 187— the defendant John B. Sanborn entered into divers and sundry contracts with certain Sioux Indians belonging to the Sisseton and Wahpeton and Medawankanton and Wahpekootah bands, by the terms of which said contracts the said  
2 Sanborn undertook, for a certain contingent interest and fee, to secure the payment by the United States to said bands of Indians their respective shares of certain annuities, which had been theretofore confiscated by the United States.

4th. Complainants further aver that in the year 1889 a commission was appointed by the Secretary of the Interior to negotiate with said Sisseton and Wahpeton bands of Sioux Indians, and, if possible, to make a treaty with them for the cession of certain of their lands; that said commission did negotiate a treaty with said Indians, which, among other things, provided for the restoration of said confiscated annuities to certain of said scouts, as provided for in the sundry contracts made with and held by the said defendant, Sanborn, as aforesaid, which treaty was sent to Congress for ratification at the beginning of the session in the month of December, 1890.

5th. That early in the said session of Congress, to wit, in the month of December, 1890, the said defendant, Sanborn, entered into a verbal contract with the complainants whereby the said Sanborn employed complainants and the said complainants agreed to perform certain legal services in connection with the preparation of the case of the said Indian scouts for presentation to the committees of Congress, to appear for the said Sanborn before such committees, in fine, to represent the case of the said Indians and of the said defendant, Sanborn, in connection with the pending legislation and in all matters pertaining thereto that might arise in connection therewith, and it was agreed between said defendant, Sanborn, and these complainants that the latter should  
3 receive the sum of five thousand dollars as compensation for their services, which said sum was to be to that extent an interest in the said fees of the said defendant, Sanborn, and solely on account of the laborious and continuous services of the complainants in preparing and presenting the case of the said Indian scouts and of the said defendant, Sanborn, settlement of the claims of said scouts, as contemplated in said treaty or agreement, was provided for by proper legislation, and the same was duly carried out as to said scouts, and a part of the fees due to the said defendant, Sanborn, amounting to about thirteen thousand dollars, was then and there paid, but that a portion thereof was disallowed and postponed on account of certain questions having arisen as to the time of expiration of said contracts; that by reason of said disallowance of a portion of said fees, as aforesaid, said Sanborn refused to pay these complainants any part of their portion of said fees unless and until the balance so claimed to be due to the said Sanborn should be allowed and paid, and that thereupon the fund being the portion of the



fees allowed and paid to the said Sanborn was immediately, as complainants are informed and believe, removed from the jurisdiction of this court and into the State of Minnesota under the claim and pretense that the contracts in reference thereto being in the sole name of John B. Sanborn were his personal and individual property, and that proceedings would have to be commenced in the said State of Minnesota, if at all, and against said defendant, Sanborn, in his individual capacity; that subsequently said complainants, while asserting and protesting that their portion of said fees had been justly and fairly earned, and that the sum of five thousand (\$5,000) dollars thereof belonged to them, assisted said Sanborn to secure the  
4 recognition and payment of the balance of the said fees contracted for by the said defendant, Sanborn, and that at the last session, in the month of March, 1899, Congress by legislation authorized and directed the settlement and payment of the balance of said fees in full to date, which said balance, amounting to forty-one thousand seven hundred and two and twenty-one one-hundredth-dollars, was on or about the 28th day of March, 1899, paid to the defendant Sanborn, except the amounts remaining to be paid, as hereinafter set forth.

6th. Complainants further aver that, notwithstanding the payment of said balance of the aforesaid fees in full to date to said defendants, John B. Sanborn, and notwithstanding the many and oft-repeated promises made by him, both verbal and written, that complainants' portion thereof should be paid and turned over to them out of said balance as soon as the same should be paid to him, he, the said Sanborn, refused to pay the same and at once removed the whole of said fund out of the jurisdiction of this court and into the State of Minnesota.

7th. That the defendant Sanborn proposed that the matters so in dispute between him and the said complainants be submitted to arbitration and suggested the mode of such submission, to which complainants consented and agreed; whereupon a formal contract in writing for such arbitration was duly entered into on the 17th day of May, 1899, a copy of which said agreement is hereunto annexed as Complainants' Exhibit A, to which reference is craved as a part hereof.

8th. That pursuant to said agreement the complainants and the said defendant, Sanborn, agreed upon and named as the arbitrators  
5 under said agreement the following persons, to wit, Joseph K. McCammon, Henry N. Castle, and William C. Shelley.

Then the said arbitrators, having duly accepted the trust, met on the 20th day of May, 1899, in the city of Washington, District of Columbia, and after hearing the testimony presented by the parties to the agreement and on hearing argument rendered their decision or award, whereby the said arbitrators fixed and determined that the defendant John B. Sanborn should pay to the said complainants as their portion of said fund the sum of thirty-three hundred (\$3,300) dollars, the said award having been made on the 22nd day of May, 1899, a copy of which is hereunto annexed as

Complainant's Exhibit B, to which reference is craved as a part hereof.

9th. Complainants further say that at the hearing before the board of arbitrators, as hereinbefore mentioned, said defendant, Sanborn, admitting an interest to belong to these complainants, urged that inasmuch as said interest was intended and agreed to be a *pro rata* part of the entire fee received by him under his said contracts, and inasmuch as he, the said Sanborn, had been forced to expend large sums of money in the preparation and prosecution of the claims in excess of the amount contemplated at the time the agreement was entered into with complainants, that therefore the quantum of complainants' recovery should be reduced in an equal ratio, to the end that the shares received by him and the complainants should bear the same proportion as that contemplated in the beginning; and complainants are informed and believe and aver that it was by reason and on account of this contention that the amount of said award was fixed at the aforesaid sum of thirty-three hundred (\$3,300) dollars.

6 10th. And complainants further say that on or about the 6th day of July, 1899, defendant Sanborn paid to these complainants upon said award the sum of fifteen hundred (\$1,500) dollars, leaving a balance due thereon of eighteen hundred (\$1,800) dollars, with accumulated interest, which said balance of eighteen hundred (\$1,800) dollars defendant Sanborn refuses to pay to these complainants, notwithstanding the said award and the unquestioned fairness thereof.

11th. Complainants further aver that by reason of the facts herein stated and by reason of the agreement existing between them and said defendant, Sanborn, they have had at all times and still have a present and existing interest in the fund arising out of the contract of the said defendant, Sanborn, with the said Indians and the amount due and collected by the said defendant, Sanborn, as fees under the contracts as aforesaid; that upon the submission and award aforesaid, under the terms of the agreement hereinbefore referred to and made Complainants' Exhibit A, the extent and amount of said interest became fixed and determined at the sum of thirty-three hundred (\$3,300) dollars, subject to the payment made thereon of fifteen hundred (\$1,500) dollars, as set out in the preceding paragraph.

12th. That at the time of the entering into the divers and sundry contracts with the said Indians by the defendant John B. Sanborn, which said matters are more particularly set out in the third paragraph of this bill, the defendants, John B. Sanborn and Charles King, were engaged in the practice of law in the city of Washington, District of Columbia, and in the city of St. Paul, in the State of Minnesota, under the style and firm name of Sanborn & King; that complainants have reason to believe, and they so charge and aver, that the said contracts so as aforesaid referred to in the third paragraph hereof, although entered into in the individual name of the defendant Sanborn, were made and the rights and

benefits acquired thereunder really belonged to and were made for the benefit of and were in fact assets and property of the said firm of Sanborn & King; that the contract entered into between the complainants and the defendant Sanborn, and set forth in the fifth paragraph of this bill, was with reference wholly to services rendered and to be rendered in and about the said contracts with the said Indians and set out in the third paragraph hereof, and while the said contract of services was made by the defendant Sanborn, yet these complainants have reason to believe, and they aver, that said obligation and contract was entered into by the said Sanborn for and on behalf of said firm of Sanborn & King, and that the said defendant, King, knew of the making of the said contract of employment, and that he approved and ratified the same and reaped the benefits of complainants' said services rendered under and pursuant to said contract. Complainants further aver on information and belief that the agreement to submit to arbitration, which is made a part of this bill as Exhibit A, was entered into for and on behalf of the said firm of Sanborn & King, and that the defendant King knew of said agreement before and at the time it was entered into, and that he fully approved of and consented thereto. Complainants further aver that both of the said defendants were present at the hearing of the issues submitted to the arbitrators under said arbitration agreement, and that both of the said defendants participated in said proceedings, and that the defendant King, by his conduct and declarations, consented thereto and in every way ratified the

8 agreement to arbitrate so, as aforesaid, entered into by the defendant Sanborn, and also consented to and ratified the award made thereunder, and complainants are legally advised, and they allege, that they are entitled to have the defendants and each of them discover (answers under oath being hereby expressly waived) the true relation that the said firm of Sanborn & King bore and still bears to the said contracts hereinbefore referred to and the assets and property interests created thereby, and also the liability created by the agreement to arbitrate hereinbefore referred to, and also the real relation the said firm of Sanborn & King bore and still bears to the liability created and fixed by the award made thereunder.

13th. That under the said contracts so held in the name of the defendant John B. Sanborn, and, as these complainants believe, for the benefit of the firm of Sanborn & King, fees are still due and to become due to the said defendants upon two instalments of annuities to be paid the said Sisseton and Wahpeton scouts—one instalment of which was appropriated by an item in the Indian appropriation bill passed at the last session of Congress and approved on the first day of March, 1899, the amount of the fee thereon and due under said contracts set out in the third paragraph hereof being about one thousand eight hundred and forty (\$1,840) dollars, which said Sanborn will also collect and remove beyond the jurisdiction of this court unless prevented by an order of this court, as hereinafter prayed.

14th. And complainants further say that in 1900 another and last instalment of annuities will be due to said Sisseton and Wahpeton scouts and will be appropriated in the regular course of business by the next Congress, out of which there will be due upon the contracts so held by defendants in the name of said John B. Sanborn the further sum of about one thousand eight hundred and forty (\$1,840) dollars, which, when said appropriation is made, will also be collected by said Sanborn and removed beyond the jurisdiction of this court unless prevented by the order of this court, as hereinafter prayed.

15th. Complainants further say that said two unpaid instalments of annuities are a part of the annuities restored to said Sisseton and Wahpeton scouts as a result of their efforts and services, and that the sum of ten per cent. thereon, under and by virtue of said contracts, so held in the name of John B. Sanborn, is all that remains of the fund in which they hold an interest to the extent of thirty-three hundred (\$3,300) dollars, as aforesaid, subject to the payment of the said sum of \$1,500 thereon, that is now or will hereafter be within the jurisdiction of this court, and complainants say that unless prevented by the order of this honorable court a treasury warrant will be drawn in favor of said John B. Sanborn for the full amount of fees due upon the contracts so held by him as aforesaid, which said warrant or warrants will be delivered to him, and the proceeds thereof immediately removed by him beyond the jurisdiction of this court and beyond the reach of its process, to the great and irreparable loss and damage of these complainants.

16th. And complainants further say that by reason of said contracts having been taken in the sole name of John B. Sanborn and said contract of arbitration and the award thereunder having run in the sole name of said Sanborn, though at all times and in all matters and proceedings in connection with said case and with the employment of complainants said Sanborn has, as these complainants are informed and verily believe, and so charge the fact to be, acted for and on behalf of said firm of Sanborn & King, they are wholly without remedy at law.

17th. Complainants further aver that by reason of the facts herein disclosed and on account of the gross misconduct of said defendant, Sanborn, in the misapplication of said funds arising out of said described contracts and the appropriation to his own use of the portion thereof belonging to these complainants, — has shown himself to be an improper and unfit person to receive the balance of the proceeds due and to become due upon said contracts which belong jointly to complainants and the defendants.

Complainants therefore pray:

First. That the United States writ of subpoena may issue to the defendants, John B. Sanborn and Charles King, commanding them and each of them to appear in this honorable court on a day to be therein named and answer the exigencies of this bill.

Second. That during the pendency of this suit the said defendants and each of them, their agents and attorneys, may be enjoined

by the order of this court from applying for or receiving from the Government of the United States or any person or persons having in his or their possession any draft, warrant, or money, or the proceeds of any draft or warrant issued to the defendants or either of them or any attorney, agent, or assignee of them or either of them in payment of any fees due to said defendant, John B. Sanborn, on account of services rendered on behalf of the scouts of the Sisseton and Wahpeton bands of Sioux Indians, until the further order of this court, and that upon the final hearing of this suit said injunction may be made perpetual.

Third. That said defendants may full, true, direct, and perfect answer make to all and singular the charges and matters aforesaid as fully in every respect as if they and each of them had been herein specifically interrogated.

Fourth. That a receiver may be appointed by this court, according to the usages, practice, and rules thereof, to collect, take, and receive from the Government of the United States or from any person having custody thereof any draft, check, warrant, or money derived from any draft, check, or warrant issued by the United States in payment to John B. Sanborn for services to said scouts, as aforesaid, and to dispose of said such draft, check, warrant, or money as this court may hereafter direct.

Fifth. That complainants may be adjudged and decreed to have and possess an interest in the fund arising as fees under said contracts so held by defendants in the name of said John B. Sanborn in the sum of thirty-three hundred (\$3,300) dollars, as fixed by the board of arbitrators, as herein set forth, with interest thereon from the 22nd day of May, 1899, at the rate of six per cent. per annum, less the sum of fifteen hundred (\$1,500) dollars paid thereon on the 6th day of July, 1899; and that said receiver be directed, after paying the costs of this suit, to pay said sum to complainants.

Sixth. For such other and further relief as may to the court seem just and proper.

CHARLES A. MAXWELL.  
GEO. S. CHASE.

DOUGLASS & DOUGLASS,  
ANDREW Y. BRADLEY,  
*Solicitors for Complainants.*

12 DISTRICT OF COLUMBIA, *To wit:*

We do solemnly swear that we have read the foregoing bill by us subscribed and know the contents thereof, and that the facts therein stated upon our personal knowledge are true, and those stated upon information and belief we believe to be true.

CHARLES A. MAXWELL.  
GEO. S. CHASE.

Subscribed and sworn to before me this 24 day of July, A. D. 1899.

JOHN R. YOUNG, *Clerk.*

## EXHIBIT A.

Filed Jul- 24, 1899.

*Agreement to Arbitrate.*

Memorandum of agreement between John B. Sanborn, party of the first part, and Charles A. Maxwell and George S. Chase, parties of the second part.

It is claimed by the parties of the second part, that five thousand (\$5,000) dollars, is due them from the party of the first part for services rendered by them under contract in connection with the claim of the party of the first part for fees due him for services rendered the Sisseton and Wahpeton Sioux Indians. This claim  
13 being disputed by the party of the first part, an agreement was reached by telegraph to submit the matter to arbitration, informally, upon the merits and justice of the claim, without regard to technicalities, each party to name one arbitrator and to agree upon a third. The parties having met the party of the first part names Henry A. Castle, Esq., and the parties of the second part, W. C. Shelley, Esq., and the parties have agreed upon Joseph K. McCammon, Esq., as the third.

It is agreed that the arbitrators shall meet at as early a date as possible and that the case shall then be heard informally by them.

Testimony may be given orally, or, in case of witnesses distant from Washington, in writing, all of which shall be treated as if under oath, unless upon special request by either party to have it verified by oath.

The parties agree severally to abide by the decision of the arbitrators, or a majority of them.

And expenses incident to the arbitration shall be divided equally between the parties.

The arbitrators are authorized to make such rules as they think necessary in regard to the conduct of the arbitration.

(Signed)

JOHN B. SANBORN.  
C. A. MAXWELL.  
GEO. S. CHASE.

14

## EXHIBIT B.

*Award of Arbitrators.*

Filed Jul- 24, 1899.

Having considered the matter submitted to us by Mess. Chase and Maxwell and Gen. John B. Sanborn, we are of the opinion that Gen. Sanborn should pay to Mess. Chase and Maxwell the sum of thirty-three hundred dollars.

(Signed)

JOS. K. McCAMMON.  
HENRY A. CASTLE.  
W. C. SHELLEY.



I subscribe to the above for the sake of unanimity, but my judgment is that the compensation should be much higher.

W. C. SHELLEY.

*Temporary Restraining Order.*

Filed Jul- 24, 1899.

In the Supreme Court of the District of Columbia.

CHARLES A. MAXWELL and GEORGE S. CHASE,  
under the Firm Name of "Maxwell &  
Chase," Complainants,

vs.

JOHN B. SANBORN and CHARLES KING, under  
the Firm Name of "Sanborn & King," De-  
fendants.

Equity. No. 20673,  
Doc. 47.

15 On consideration of the verified bill in this cause, it is, by the court, this the 24th day of July, 1899, ordered that upon compliance by complainants with rule No. 42, equity rules of this court, the defendants and each of them, their agents, attorneys, and representatives, be enjoined and restrained from applying for or receiving from the Government of the United States or any of its departments or from any person or persons having in his or their possession any draft, warrant, or money or the proceeds of any draft or warrant issued to the defendants or either of them, or any attorney, agent, or assignee of them or either of them, or issued to any other person in which the defendants or either of them may have an interest, or for the payment of any fees due to the defendant John B. Sanborn or to the defendants, Sanborn & King, on account of services rendered on behalf of the scouts of the Sisseton and Wahpeton bands of Sioux Indians, until the further order of this court. It is further ordered that the defendants show cause in this court on the first day of August, 1899, at the hour of ten a. m., why this restraining order should not be continued during the pendency of this suit, and that the said defendants, on the said date and hour, do show cause why a receiver should not be appointed to collect and receive the funds referred to in the said bill, and to hold the same during the pendency of this cause.

A. C. BRADLEY, *Justice.*

*Marshal's Return.*

Served copy of within order on within-named defendant, Charles King, July 31, 1899; John B. Sanborn not to be found Aug. 1, 1899.

AULICK PALMER, *Marshal.*

C.

*Separate Answer of Defendant Charles King.*

Filed Aug. 12, 1899.

In the Supreme Court of the District of Columbia.

CHARLES A. MAXWELL ET AL.	} In Equity. No. 20673.
vs.	
JOHN B. SANBORN ET AL.	

The answer of the defendant Charles King, who says as follows:

1. This defendant admits the allegations of the first, second, third, and fourth paragraphs of complainants' bill.

2. For answer to the fifth paragraph of complainants' bill, this defendant says that he has no knowledge of any contract therein said to have been entered into between the defendant Sanborn and the complainants for the employment of complainants in and about the matters therein referred to, or of any agreement between the defendant Sanborn and these complainants whereby the latter was to receive the sum of five thousand dollars or any other sum as compensation for their services, nor does he believe that any such contract was made, and he calls upon the complainants for strict proof of their allegations thereof. This defendant denies that such sum, had such an agreement been made, could become an interest in the fees of the said defendant, Sanborn, and denies that any facts stated in said bill show that such an interest in the fees alleged was created. This defendant denies the allegation that it was solely on account of the laborious and continuous services of complainants that settle-

ment of the claims referred to in said bill was made, and, on the contrary, avers of his own knowledge that efforts were made by himself and by other persons in securing settlement of the claims referred to in said bill; and this defendant, having no positive knowledge or reliable information of any services rendered by complainants in or about the years 1890 or 1891, prays for strict proof thereof.

And this defendant further avers, in answer to the allegations of said paragraph, that under and by virtue of the 27th section of the act of March 3, 1891 (26 Statutes at Large, p. 1038), provision was made for the payment of the claims referred to in complainants' bill, but by reason of the provisions of said section relating to attorneys' fees said Sanborn received but a small portion of the amount due him, to wit, as this defendant believes, about thirteen thousand dollars (\$13,000), said amount being received in the summer of 1891; and this defendant further avers that by reason of such provisions relating to attorneys' fees, the same forming a part of the very legislation for which complainants claim responsibility, said Sanborn was unable to collect any greater amount of the fees due him, but was obliged to begin and prosecute various proceedings in order to secure the balance due him. Said proceedings were as follows:

(1.) Before the Secretary of the Interior and the Attorney General



of the United States in an argument upon the legal questions involved in connection with the dates of ratification of the contracts between the defendant Sanborn and the Indians referred to in said bill of complaint.

(2.) Before the Court of Claims and the Supreme Court of the United States upon the same question, this having been referred to the Court of Claims by the Secretary of the Interior.

18 (3.) Before the Congress of the United States in connection with a bill for the payment of the balance of fees due to said Sanborn.

And in all these efforts, resulting finally in the passage of the act of March 3, 1899, § 2 (30 Stat. L., 946), so far as this defendant is informed and believes, the complainants did not render any assistance, but just prior to the passage by Congress of the act of March 3, 1899, threatened to use all their efforts to defeat said legislation.

In answer to that portion of said paragraph which avers that the amount of thirteen thousand dollars (\$13,000), as aforesaid, was removed from the jurisdiction of this court and into the State of Minnesota, this defendant says that said amount was never within the jurisdiction of this court, but was received by said Sanborn in the States of Minnesota, South Dakota, and North Dakota at the time when the Indians entitled were paid by the disbursing officer of the United States then present in said State; that the payments were then and there made to John B. Sanborn as his personal and individual property and never came into the custody or under the control of this defendant. This defendant further states that he had no knowledge, at the time of the payment of said sum, of any claim being made by the complainants herein to any part thereof.

And this defendant verily believes that on or about the 28th day of March, 1899, the Secretary of the Treasury and other officers of the Treasury and Interior Departments paid to the defendant Sanborn the sum of forty-one thousand seven hundred and two dollars and twenty-one cents (\$41,702.21) in accordance with the  
19 terms of the act of March 3, 1899, as aforesaid.

3. In answer to the sixth paragraph of said bill of complaint, this defendant avers that he has no knowledge of promises made by said Sanborn to pay any portion of said fees to the complainants, and denies that said Sanborn removed the whole or any part of said sum out of the jurisdiction of this court, but avers that a United States Treasury warrant for the amount paid the said Sanborn was issued by the United States Treasury Department and sent by said department directly to said Sanborn in St. Paul, in the State of Minnesota.

4. In answer to the seventh paragraph of complainants' bill, this defendant states that he has no personal knowledge of the circumstances under which the complainants and the defendant Sanborn made an agreement to submit the dispute which had arisen between them to arbitration; that he is informed and verily believes that a contract in writing for such arbitration was entered into between the parties, and so far as he has knowledge the copy annexed as Exhibit A to complainants' bill is a true copy thereof.

5. In answer to the eighth paragraph of complainants' bill, this defendant alleges that he verily believes that the persons named in said bill were agreed upon and named as the arbitrators; that said persons met on the day alleged, as stated in said paragraph, and heard testimony and argument by the complainants on the one hand and by the said Sanborn on the other; that this defendant does not know of his personal knowledge what the said persons named in said paragraph as arbitrators decided, but is informed that their decision was as stated in said paragraph and has no reason to doubt

the correctness of the copy of the award annexed to Com-  
20 plainants' Exhibit B. In the absence of any admission of the facts stated in said eighth paragraph by the defendant Sanborn, this defendant demands strict proof thereof.

6. In answer to the ninth paragraph of the complainants' bill, this defendant alleges that, although he was present at the hearing of the board of arbitrators, as mentioned in said paragraph, he did not hear defendant Sanborn make the admission or arguments therein alleged, but this defendant avers that said Sanborn asserted that, although nothing was legally due to complainants, he was willing to pay them what might fairly and in good conscience be due them, if it should appear that they had rendered meritorious services, but that the large expenses incurred by him in prosecuting his claim to the balance of fees due him were to be considered in settling what should fairly be paid to them; and this defendant, respectfully insisting that said paragraph states matters entirely immaterial to the cause of complaint, prays to be relieved from further answer thereto.

7. And the defendant further says in answer to paragraph ten that he believes that defendant Sanborn has paid to complainants the sum of one thousand five hundred dollars, and is informed and verily believes that the said Sanborn has refused to pay any more than said sum, averring as his reason therefor that no more is due them.

8. In answer to the eleventh paragraph of complainants' bill, this defendant denies that complainants have any present or existing interest in the fund arising out of the contract averred in said paragraph in the sum of thirty-three hundred dollars (\$3,300) or in any other sum.

21 9. In answer to the twelfth paragraph of complainants' bill, this defendant admits that defendant John B. Sanborn and this defendant were engaged up to the thirtieth day of June, 1878, in the practice of law in the city of Washington, District of Columbia, but not in the city of Saint Paul, in the State of Minnesota, under the firm name and style of Sanborn & King; that about the year 1877 said Sanborn proposed to this defendant that the claims of the Sioux Indians referred to in paragraph third of complainants' bill should be taken up by said firm, an opportunity having been given for the employment of said firm in connection with said cases. This defendant, upon full investigation of the cases, declined to engage in the prosecution of them as firm business, believing that the payment would be very long delayed and that large

expenses would have to be incurred by the attorneys, this defendant being informed and believing that the claimants were unable to make advances of costs; that said Sanborn then stated that he would undertake the prosecution of these cases in his own name and on his own sole account, undertaking to bear such expenses as should be required. This defendant, then as now residing in Washington, agreed that he would render such services in said case as might be required by said Sanborn, said Sanborn being then a resident of Saint Paul, in the State of Minnesota, and it was jointly agreed between the defendants that upon collection of the fees in said cases by said Sanborn this defendant should receive his compensation from the amount received by said Sanborn.

That this defendant has received the sum of two thousand dollars (\$2,000) from said Sanborn on the following dates:

22 November 30, 1891, fifteen hundred dollars (\$1,500).

March 12, 1894, three hundred dollars (\$300).

February 15, 1896, two hundred dollars (\$200).

That he paid out incidentally in the years 1894, 1895, and 1896, in connection with the expenses in the case before the Court of Claims and the Supreme Court of the United States, the sum of two hundred and twenty-two dollars and ninety-six cents (\$222.96), which has not been reimbursed him except by the sums above stated; and this defendant admits that he expects to receive a further amount out of the sum received by said Sanborn under the act of March 3, 1899, but the amount is now the subject of correspondence and negotiations between him and said Sanborn and has not yet been finally and definitely agreed upon, there being a question between this defendant and defendant Sanborn as to the amount which this defendant is to receive.

And this defendant denies that he has reaped the benefits of complainants' services rendered pursuant to any alleged contract or otherwise for the reason that he has not received any share of the amount paid to said Sanborn by the United States Treasury Department in pursuance of the act of Congress approved March 3, 1899.

And this defendant admits that he knew that an agreement to submit to arbitration was contemplated, and while he knew no reason why said Sanborn should not enter into said agreement, nevertheless his consent was neither asked nor obtained thereto, inasmuch as the entire matter in question had always been under the charge, management, and control of said Sanborn as his own case; and this defendant admits that he was present at the hearing of the issues submitted

23 to the arbitrators, and that defendant Sanborn was present at said time and participated in said proceedings, but this defendant not having been a party to said arbitration nor having received any portion of the proceeds of the said last-named appropriation by Congress, he is unable to see how he is in any degree concerned therein; and this defendant, having now fully stated the true relation between said Sanborn and this defendant, prays that he may be discharged from any part in this suit.

10. And this defendant verily believes, as alleged in the thirteenth

and fourteenth paragraphs of the complainants' bill, that fees are still due to said John B. Sanborn on the accounts mentioned in said paragraph and in the amounts stated, but he denies that said Sanborn has any power over said amounts, as payment will be made, if made, from the Treasury of the United States, and such sum as may be held by the executive officers of the United States to be due to said Sanborn will be sent directly to him by the Secretary or other officer of the Treasury.

11. In answer to the fifteenth paragraph of complainants' bill, this defendant says that the said two unpaid instalments referred to in paragraphs thirteen and fourteen are all that remain unpaid of the fees due to John B. Sanborn under his contracts with the Indians therein referred to and under the acts of Congress hereinbefore recited; but this defendant avers that this court has no jurisdiction over the officers of the United States Treasury Department to direct how or when they shall draw any Treasury warrant, and that it is outside the power and jurisdiction of this court to direct them whether to deliver said warrants to the said Sanborn at his residence in the city of Saint Paul, in the State of Minnesota, or otherwise.

24 12. And this defendant avers, in answer to the sixteenth paragraph of the complainants' bill, that the complainants have a full and adequate remedy at law against the said Sanborn in the courts of the State of Minnesota or elsewhere, wherever the said Sanborn may be, and this defendant denies that the matters and proceedings in connection with the said case and the alleged employment of the complainants, as set forth in said paragraph, in anywise bound this defendant.

13. And this defendant denies the seventeenth paragraph of said bill.

14. And having answered fully all the allegations of the said bill, this defendant now prays that he may be discharged from further attendance in this court, and that the complainants' bill may be dismissed as to this defendant, and that the costs incurred herein by this defendant may be paid by the complainants.

WM. B. KING,  
*Solicitor for Defendant Charles King.*

DISTRICT OF COLUMBIA, ss:

Charles King, being duly sworn, deposes and says that he is one of the defendants in this case; that he has read the foregoing answer, and that the facts therein stated upon his own knowledge are true and those stated upon his information and belief he believes to be true.

CHARLES KING.

Sworn to and subscribed before me this 12th day of August, 1899.

S. A. TERRY,  
*Notary Public.*

[SEAL.]

25

*Motion to Dissolve Restraining Order.*

Filed Aug. 12, 1899.

In the Supreme Court of the District of Columbia.

CHARLES A. MAXWELL ET AL.	} Equity. No. 20673.
v.	
JOHN B. SANBORN ET AL.	

Now comes Charles King, one of the defendants in the above-entitled cause, and prays this court to dissolve the temporary restraining order granted on the 24th day of July, 1899, for the following reasons:

1. No service has been had upon John B. Sanborn, the defendant in this cause, who appears by the answer of this defendant already filed to be the sole party in interest in the matters and things complained of.

2. The object of this restraining order being to prevent the collection by the said Sanborn of moneys due him from the United States and now in the Treasury of the United States, the court, not having obtained jurisdiction of the person of said Sanborn, has no jurisdiction of the subject-matter of the suit.

3. The object of this suit being to secure an interest alleged to belong to the complainants in certain moneys due from the United States to said Sanborn, the complainants have obtained a restraining order to prevent Sanborn from prosecuting before the executive departments of the Government a claim to certain balances of the fund in which the complainants claim an interest. This totally defeats the object of their bill. If either the complainants or the defendant Sanborn is to obtain anything on account of the

26 balances now due, it must be by prosecuting this claim. The complainants are, therefore, no nearer their rights by preventing Sanborn from prosecuting the claim than they would be if Sanborn collected it. The order issued is, therefore, punitive in its nature, preventing Sanborn from getting the money that is due him, but not helping the complainants in the assertion of what they allege to be their rights. This is outside the province of a court of equity.

WM. B. KING,  
*Solicitor for Defendant Charles King.*

*Motion for Leave to Amend Bill.*

Filed Nov. 11, 1899.

In the Supreme Court of the District of Columbia, Holding a Special  
Term in Equity.

CHARLES A. MAXWELL and GEORGE S. CHASE, under the Firm Name of "Maxwell and Chase," Complainants,	} Equity. No. 20673.
vs.	
JOHN B. SANBORN and CHARLES KING, under the Firm Name of "Sanborn and King," De- fendants.	

Now comes the complainants, by their solicitors, and pray the  
court for leave to amend their original bill filed herein by making  
Ellis H. Roberts, the Treasurer of the United States, a party  
27 defendant thereto, and by amending the following paragraphs  
as follows:

1. By adding to paragraph 2 of said original bill a subparagraph  
as follows:

That the defendant Ellis H. Roberts is a citizen of the United  
States, and at present a resident of the District of Columbia, and is  
sued as the Treasurer of the United States, duly appointed under  
the act of Congress providing therefor.

2. By adding to paragraph 8 of said original bill a subparagraph  
as follows:

That ever since the rendition by said arbitrators of their said  
award the said defendant, Sanborn, has been and still is and remains  
beyond the jurisdiction of this court.

3. By amending paragraph 12 of said original bill by inserting  
after the words "were present," in the 12th line on page 6, the words  
"in person and by attorney," and by inserting after the words "said  
proceedings" in said paragraph, in the 15th line on page 6, the  
words "and that said proceedings were entered into upon the as-  
sumption and with the distinct understanding that the defendants  
Sanborn and King were copartners;" and by inserting after the  
words "made thereunder" in said 12th paragraph, in the 18th line  
on page 6, the words "that in the proceedings had before the said  
arbitrators, as aforesaid, the statement was made and reiterated in  
the presence of the said defendants, Sanborn and King, that they,  
the said defendants, were and had been copartners in the matter  
under consideration before said arbitrators, and the said defendants  
did not nor did either of them on their own behalf or by their at-  
torney at any time before said arbitrators deny or in any way refute  
or object to said statement, but said defendants and each of them  
assented thereto; and the complainants attach hereto in  
28 support of this allegation and other allegations herein as to  
the existence of a copartnership between said defendants,



Sanborn and King, a letter written to the complainants under date of June 7, 1899, as Exhibit C, and ask that the same be read as a part of this their amended bill."

4. By inserting after the words "Charles King" in the second line of the first prayer on the 8th page of said original bill, the words "and Ellis H. Roberts, Treas. of the United States."

5. And by adding to the second prayer of said original bill a further prayer as follows: "and that the defendant Ellis H. Roberts, Treasurer of the United States, be enjoined from paying to the defendants or either of them, their agents, assignees, and attorneys, any draft or warrant or money on account of services rendered by the said defendant, John B. Sanborn, on behalf of the scouts of the Sisseton and Wahpeton bands of Sioux Indians, until the further order of this court, and that upon the final hearing of this suit said injunction may be made perpetual.

The complainants annex hereto as a part of this motion a copy of their bill as amended.

The defendants will please take notice that the above motion will be called to the attention of the justice holding equity court No. 2 on Saturday, the 4th day of November, 1899, at 10 o'clock a. m., or as soon thereafter as counsel may be heard.

DOUGLASS & DOUGLASS,  
ANDREW Y. BRADLEY,  
*Solicitors for Complainant.*

29 *Order Granting Leave to File Amended Bill.*

Filed Nov. 11, 1899.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

CHARLES A. MAXWELL and GEORGE S. CHASE,  
under the Firm Name of "Maxwell and  
Chase," Complainants,

vs.

JOHN B. SANBORN and CHARLES KING, under  
the Firm Name of "Sanborn and King,"  
Defendants.

} Equity. No. 20673.

This cause coming on to be heard upon the motion of the complainants for leave to file an amended bill herein, it is this 11th day of November, 1899, ordered that leave be, and is hereby, granted to the complainants to file their amended bill herein as annexed to said motion without prejudice to the injunction heretofore granted herein.

By the court:

JOB BARNARD,  
*Associate Justice.*

*Amended Bill.*

Filed Nov. 11, 1899.

In the Supreme Court of the District of Columbia, Holding a Special  
Term in Equity.

CHARLES A. MAXWELL and GEORGE S. CHASE,  
under the Firm Name of "Maxwell and  
Chase," Complainants,

vs.

JOHN B. SANBORN and CHARLES KING, under  
the Firm Name of "Sanborn and King,"  
and Ellis H. Roberts, the Treasurer of the  
United States, Defendants.

} Equity. No. 20673.

To the supreme court of the District of Columbia, holding an equity  
court:

The complainants state as follows:

1. That they are attorneys and counsellors at law, citizens of the United States, and residents of the District of Columbia, and lately doing business under the firm name and style of "Maxwell & Chase," and bring this suit in their own right.

2. That the defendants John B. Sanborn and Charles King are both citizens of the United States, said King being a citizen of the District of Columbia, and said John B. Sanborn being a citizen and resident of St. Paul, Minnesota, and were formerly partners in the practice of law in the city of Washington, District of Columbia, and are sued in their own right; that the defendant Ellis H. Roberts is a citizen of the United States, and at present a resident of the District of Columbia, and is sued as the Treasurer of the United States, duly appointed under the act of Congress providing  
31 therefor.

3. That in the year 188— the defendant John B. Sanborn entered into divers and sundry contracts with certain Sioux Indians belonging to the Sisseton and Wahpeton and Medawankanton and Wahpekootah bands, by the terms of which said contracts the said Sanborn undertook for a certain contingent interest and fee to secure the payment by the United States to said bands of Indians their respective shares of certain annuities which had been theretofore confiscated by the United States.

4. Complainants further aver that in the year 1889 a commission was appointed by the Secretary of the Interior to negotiate with said Sisseton and Wahpeton bands of Sioux Indians, and if possible to make a treaty with them for the cession of certain of their lands; that said commission did negotiate a treaty with said Indians, which, among other things, provided for the restoration of said confiscated annuities to certain of said scouts, as provided for in the sundry contracts made with and held by the said defendant, Sanborn, as aforesaid, which treaty was sent to Congress for ratifi-



cation at the beginning of the session in the month of December, 1890.

5. That early in the said session of Congress, to wit, in the month of December, 1890, the said defendant, Sanborn, entered into a verbal contract with the complainants whereby the said Sanborn employed complainants and the said complainants agreed to perform certain legal services in connection with the preparation of the case of the said Indian scouts for presentation to the committees of Congress,

32 to appear for the said Sanborn before such committees, in fine, to represent the case of the said Indians and of the said defendant, Sanborn, in connection with the pending legislation and in all matters pertaining thereto that might arise in connection therewith, and it was agreed between said defendant, Sanborn, and these complainants that the latter should receive the sum of five thousand dollars as compensation for their services, which said sum was to be, to that extent, an interest in the said fees of the said defendant, Sanborn, and solely on account of the laborious and continuous services of the complainants in preparing and presenting the case of the said Indian scouts and of the said defendant, Sanborn, settlement of the claims of said scouts, as contemplated in said treaty or agreement, was provided for by proper legislation and the same was duly carried out as to said scouts, and a part of the fees due to the said defendant, Sanborn, amounting to about thirteen thousand dollars, was then and there paid, but that a portion thereof was disallowed and postponed on account of certain questions having arisen as to the time of expiration of said contracts; that by reason of said disallowance of a portion of said fees, as aforesaid, said Sanborn refused to pay these complainants any part of their portion of said fees unless and until the balance so claimed to be due to the said Sanborn should be allowed and paid, and that thereupon the fund, being the portion of the fees allowed and paid to the said Sanborn, was immediately, as complainants are informed and believe, removed from the jurisdiction of this court and into the State of Minnesota under the claim and pretense that the contracts in reference thereto, being in the sole name of John B. Sanborn, were

33 his personal and individual property, and that proceedings would have to be commenced in the said State of Minnesota, if at all, and against said defendant, Sanborn, in his individual capacity; that subsequently said complainants, while asserting and protesting that their portion of said fees had been justly and fairly earned, and that the sum of five thousand dollars (\$5,000.00) thereof belonged to them, assisted said Sanborn to secure the recognition and payment of the balance of the said fees contracted for by the said defendant, Sanborn, and that at the last session, in the month of March, 1899, Congress, by legislation, authorized and directed the settlement and payment of the balance of said fees in full to date, which said balance, amounting to forty-one thousand seven hundred and two and twenty-one one-hundredths dollars, was on or about the 28th day of March, 1899, paid to the defendant Sanborn except the amounts remaining to be paid, as hereinafter set forth.

6. Complainants further aver that notwithstanding the payment of said balance of the aforesaid fees in full to date to said defendants, John B. Sanborn, and notwithstanding the many and oft-repeated promises made by him, both verbal and written, that complainants' portion thereof should be paid and turned over to them out of said balance as soon as the same should be paid to him, he, the said Sanborn, refused to pay the same and at once removed the whole of said fund out of the jurisdiction of this court and into the State of Minnesota.

7. That the defendant Sanborn proposed that the matters so in dispute between him and the said complainants be submitted to arbitration, and suggested the mode of such submission, to which complainants consented and agreed, whereupon a formal contract in writing for such arbitration was duly entered into on the 17th day of May, 1899, a copy of which said agreement is hereunto annexed as Complainants' Exhibit A, to which reference is craved as a part hereof.

8. That, pursuant to said agreement, the complainants and the said defendant, Sanborn, agreed upon and named as the arbitrators under said agreement the following persons, to wit, Joseph K. McCammon, Henry N. Castle, and William C. Shelley. Then the said arbitrators, having duly accepted the trust, met on the 20th day of May, 1899, in the city of Washington, District of Columbia, and after hearing the testimony presented by the parties to the agreement, and on hearing argument, rendered their decision or award, whereby the said arbitrators fixed and determined that the defendant John B. Sanborn should pay to the said complainants as their portion of said fund the sum of thirty-three hundred dollars (\$3,300), the said award having been made on the 22nd day of May, 1899, a copy of which is hereunto annexed as Complainants' Exhibit B, to which reference is craved as a part hereof; that ever since the rendition by said arbitrators of their said award the said defendant, Sanborn, has been and still is and remains beyond the jurisdiction of this court.

9. Complainants further say that at the hearing before the board of arbitrators, as hereinbefore mentioned, said defendant, Sanborn, admitting an interest to belong to these complainants, urged that inasmuch as said interest was intended and agreed to be a *pro rata* part of the entire fee received by him under his said contracts, and inasmuch as he, the said Sanborn, had been forced to expend large sums of money in the preparation and prosecution of the claims in excess of the amount contemplated at the time the agreement was entered into with complainants, that therefore the quantum of complainants' recovery should be reduced in an equal ratio, to the end that the shares received by him and the complainants should bear the same proportion as that contemplated in the beginning, and complainants are informed and believe and aver that it was by reason and on account of this contention that the amount of said award was fixed at the aforesaid sum of thirty-three hundred dollars (\$3,300).

10. And complainants further say that on or about the 6th day

of July, 1899, the defendant Sanborn paid to these complainants, upon said award, the sum of fifteen hundred dollars (\$1,500.00) leaving a balance due thereon of eighteen hundred dollars (\$1,800.00), with accumulated interest, which said balance of eighteen hundred dollars (\$1,800.00) defendant Sanborn refuses to pay to these complainants, notwithstanding the said award and the unquestioned fairness thereof.

11. Complainants further aver that by reason of the facts herein stated and by reason of the agreement existing between them and said defendant, Sanborn, they have had at all times and still have a present and existing interest in the fund arising out of the contract of the said defendant, Sanborn, with the said Indians and the amount due and collected by the said defendant, Sanborn, as fees under the contracts as aforesaid; that upon the submission and award aforesaid, under the terms of the agreement hereinbefore referred to and made Complainants' Exhibit A, the extent and amount of said interest became fixed and determined at the sum of thirty-three hundred dollars (\$3,300.00), subject to the payment thereon of fifteen hundred dollars (\$1,500.00), as set out in the preceding paragraph.

36 12. That at the time of the entering into the divers and sundry contracts with the said Indians by the defendant John B. Sanborn, which said matters are more particularly set out in the third paragraph of this bill, the defendants John B. Sanborn and Charles King were engaged in the practice of law in the city of Washington, District of Columbia, and in the city of St. Paul, in the State of Minnesota, under the style and firm name of Sanborn and King; that complainants have reason to believe, and they so charge and aver, that the said contracts so as aforesaid referred to in the third paragraph hereof, although entered into in the individual name — the defendant Sanborn, were made and the rights and benefits acquired thereunder really belong to and were made for the benefit of and were in fact assets and property of the said firm of Sanborn and King; that the contract entered into between the complainants and the defendants Sanborn and set forth in the fifth paragraph of this bill was with reference wholly to services rendered and to be rendered in and about the said contracts with the said Indians and set out in the third paragraph hereof, and while the said contract of services was made by the defendant Sanborn, yet these complainants have reason to believe, and they aver, that said obligation and contract was entered into by the said Sanborn for and on behalf of said firm of Sanborn and King, and that the said defendant, King, knew of the making of the said contract of employment, and that he approved and ratified the same and reaped the benefits of complainants' said services rendered under and pursuant to said contract. Complainants further aver on information and belief that the agreement to submit to arbitration, which is made a part of this bill as Exhibit A, was entered into and on behalf of  
37 the said firm of Sanborn and King, and that the defendant King knew of said agreement before and at the time it was

entered into, and that he fully approved of and consented thereto. Complainants further aver that both of the said defendants were present in person and by attorney at the hearing of the issues submitted to the arbitrators under said arbitration agreement, and that both of the said defendants participated in said proceedings, and that said proceedings were entered into upon the assumption and with the distinct understanding that the defendants Sanborn and King were copartners, and that the defendant King, by his conduct and declarations, consented thereto and in every way ratified the agreement to arbitrate, so, as aforesaid, entered into by the defendant Sanborn, and also consented to and ratified the award made thereunder; that in the proceedings had before the said arbitrators, as aforesaid, the statement was made and reiterated in the presence of the said defendants, Sanborn and King, that they, the said defendants, were and had been copartners in the matter under consideration before said arbitrators, and the said defendants did not nor did either of them on their own behalf or by their attorney at any time before said arbitrators deny or in any way refute or object to said statement, but said defendants and each of them assented thereto; and the complainants attach hereto, in support of this allegation and other allegations herein as to the existence of a copartnership between said defendants, Sanborn and King, a letter written to the complainants under date of June 7, 1899, as Exhibit C, and ask that the same be read as a part of this their amended bill; and complainants are legally advised, and they allege, that they are en-

38       titled to have the defendants and each of them discover  
      (answers under oath being hereby expressly waived) the true  
      relation that the said firm of Sanborn and King bore and  
still bears to the said contracts hereinbefore referred to and the  
assets and property interests created thereby, and also the liability  
created by the agreement to arbitrate, hereinbefore referred to, and  
also the real relation the said firm of Sanborn and King bore and  
still bears to the liability created and fixed by the award made  
thereunder.

13. That under the said contracts so held in the name of the defendant John B. Sanborn, and as these complainants believe for the benefit of the firm of Sanborn and King, fees are still due and to become due to the said defendants upon two installments of annuities to be paid the said Sisseton and Wahpeton scouts, one installment of which was appropriated by an item in the Indian appropriation bill passed at the last session of Congress and approved on the first day of March, 1899, the amount of the fee thereon and due under said contracts set out in the third paragraph hereof being about one thousand eight hundred and forty (\$1,840.00) dollars, which said Sanborn will also collect and remove beyond the jurisdiction of this court unless prevented by an order of this court, as hereinafter prayed.

14. And complainants further say that in 1900 another and last instalment of annuities will be due to said Sisseton and Wahpeton scouts and will be appropriated in the regular course of business by the next Congress, out of which there will be due upon the contracts

so held by defendants in the name of said John B. Sanborn the further sum of about one thousand eight hundred and forty dollars (\$1,840.00), which, when said appropriation is made, will also  
39 be collected by said Sanborn and removed beyond the jurisdiction of this court unless prevented by the order of this court, as hereinafter prayed.

15. Complainants further say that said two unpaid instalments of annuities are a part of the annuities restored to said Sisseton and Wahpeton scouts as a result of their efforts and services, and that the sum of ten per cent. thereon, under and by virtue of said contracts, so held in the name of John B. Sanborn, is all that remains of the fund in which they hold an interest to the extent of thirty-three hundred dollars (\$3,300.00), as aforesaid, subject to the payment of the said sum of (\$1,500) thereof that is now or will hereafter be within the jurisdiction of this court, and complainants say that unless prevented by the order of this honorable court a treasury warrant will be drawn in favor of John B. Sanborn for the full amount of fees due upon the contracts so held by him, as aforesaid, which said warrant or warrants will be delivered to him and the proceeds thereof immediately removed by him beyond the jurisdiction of this court and beyond the reach of its process, to the great and irreparable loss and damage of these complainants.

16. And complainants further say that by reason of said contracts having been taken in the sole name of John B. Sanborn and said contract of arbitration and the award thereunder having run in the sole name of said Sanborn, though at all times and in all matters and proceedings in connection with said case and with the employment of complainants said Sanborn has, as these complainants are informed and verily believe, and so charge the fact to be, acted for and on behalf of said firm of Sanborn and King, they are wholly without remedy at law.

17. Complainants further aver that by reason of the facts  
40 herein disclosed and on account of the gross misconduct of said defendant, Sanborn, in the misapplication of said funds arising out of said described contracts and the appropriation to his own use of the portion thereof belonging to these complainants, — has shown himself to be an improper and unfit person to receive the balance of the proceeds due and to become due upon said contracts which belong jointly to complainants and the defendants.

Defendants therefore pray :

First. That the United States writ of subpoena may issue to the defendants, John B. Sanborn and Charles King and Ellis H. Roberts the treasurer of the United States, commanding them and each of them to appear in this honorable court on the day to be therein named and answer the exigencies of this bill.

Second. That during the pendency of this suit the said defendants and each of them, their agents and attorneys, may be enjoined by the order of this court from applying for or receiving from the Government of the United States or from any person or persons having in his or their possession any draft, warrant, or money or

the proceeds of any draft or warrant issued to the defendants or either of them or any attorney, agent, or assignee of them or either of them, in payment of any fees due to said defendant, John B. Sanborn, on account of services rendered on behalf of the scouts of the Sisseton and Wahpeton bands of Sioux Indians, until the further order of this court, and that upon the final hearing of this suit said injunction may be made perpetual, and that the defendant Ellis H. Roberts, Treasurer of the United States, be  
 41 enjoined from paying to the defendants or either of them their agents, assignees, and attorneys, any draft or warrant or money on account of services rendered by the said defendant, John B. Sanborn, on behalf of the scouts of the Sisseton and Wahpeton bands of Sioux Indians until the further order of this court, and upon the final hearing of this suit said injunction may be made perpetual.

Third. That said defendants may full, true, direct, and perfect answer make to all and singular the charges and matters aforesaid as fully in every respect as if they and each of them had been herein specifically interrogated.

Fourth. That a receiver may be appointed by this court, according to the usages, practice, and rules thereof, to collect, take, and receive from the Government of the United States or from any person having custody thereof any draft, check, warrant, or money derived from any draft, check, or warrant issued by the United States in payment to John B. Sanborn for services to said scouts, as aforesaid, and to dispose of said such draft, check, warrant, or money as this court may hereafter direct.

Fifth. That complainants may be adjudged and decreed to have and possess an interest in the fund arising as fees under said contract so held by defendants in the name of said John B. Sanborn in the sum of thirty-three hundred (\$3,300) dollars, as fixed by the board of arbitrators, as herein set forth, with interest thereon from the 22d day of May, 1899, at the rate of six per cent. per annum, less the sum of fifteen hundred (\$1,500) dollars paid thereon on the 6th day of July, 1899, and that said receiver be directed after paying the costs of this suit to pay said sum to complainants.

42 Sixth. For such other and further relief as may to the court seem just and proper.

CHAS. A. MAXWELL.  
 GEORGE S. CHASE.

DOUGLASS & DOUGLASS,  
 ANDREW Y. BRADLEY,  
*Att'ys for Complainant.*

DISTRICT OF COLUMBIA, ss.

I, George S. Chase, do solemnly swear that I have read the foregoing bill by me subscribed and know the contents thereof, and that the matters and things stated therein on my own knowledge are true, and those stated on information and belief I believe to be true.

GEO. S. CHASE.



Subscribed and sworn to before me this 1st day of November, 1899.

[SEAL.]

CHARLES S. BUNDY,  
*Notary Public, D. C.*

For Exhibit A to amended bill, see Exhibit A to original bill, page 12.

For Exhibit B to amended bill, see Exhibit B to original bill, page 14.

43

EXHIBIT C.

Filed Nov. 11, 1899.

Law offices of John B. and E. P. Sanborn.

ST. PAUL, MINN., *June 7th*, 1899.

Messrs. Maxwell & Chase.

GENTS: Mr. Charles King was interested with me as a partner in the prosecution of the claim of the scouts and soldiers, their families and descendants of the Sisseton, Wahpeton, Medawaukanton and Wapakoota bands of Sioux. He is dissatisfied with the award of the arbitrators, and thus far has not given his consent to the payment of the same. The misunderstanding between us is one of the most marked that I have ever had with any parties in my business life. Whatever you might have understood, it is certain that my expression or Mr. King's expression went no farther and was designed to go no farther than to give you five thousand dollars if you could succeed in getting our fees, ten per cent. paid at the department, and save all other trouble and expense. This you were not able to accomplish, but the hope that you might accomplish something induced me to ask your further services to see General Whittlesey and the other officers of the bureau that were acting so badly at that time. The way to have avoided misunderstanding would have been to have dropped the whole matter when the department and bureau refused to allow the fees to be paid either by themselves or by the disbursing agent. We did not do this, and you have probably rendered some service all along, and, for aught that I know, done the very best that you could do, but I have never been able to see that you brought anything to pass or accomplished anything. It is not possible for one to state with certainty that you have not, because what you have said and done cannot be fully known. When men have tried to do their best and have accomplished nothing they would be entitled to some compensation. All my propositions for payment were contingent upon success, and the claim of the scouts and soldiers and their descendants was allowed before you came upon the field. You can see yourselves that I cannot compel Mr. King to pay half of this award unless he chooses to do so, and thus far he has not indicated that he is willing to pay more than twelve or fifteen hundred dollars. If you will compromise the amount and accept \$1,500 I

will send it on to you immediately. If you ask more I shall have to write again to Mr. King. He seems quite disposed to litigate the matter, and I do not want litigation if it can be avoided. Please let me hear from you at once.

Truly yours,

JOHN B. SANBORN.

*Motion for Appointment of Receiver.*

Filed Nov. 14, 1899.

In the Supreme Court of the District of Columbia.

C. A. MAXWELL ET AL., Plaintiffs,	}	In Equity. No. 20673.
vs.		
JOHN SANBORN ET AL., Defendants.		

Now come the plaintiffs, by their solicitors, and move the court for the appointment of a receiver as prayed in the bill and amended bill filed herein, said motion being based upon said bills and the exhibits thereto attached.

DOUGLASS & DOUGLASS,  
ANDREW Y. BRADLEY,  
*Solicitors for Plaintiffs.*

To the defendants and their solicitors:

You will please take notice that the above motion will be called to the attention of Mr. Justice Barnard, holding equity court No. 2, on Friday, the 17th day of November, 1899, at ten (10) o'clock a. m., or as soon thereafter as counsel may be heard.

DOUGLASS & DOUGLASS,  
ANDREW Y. BRADLEY,  
*Solicitors for Plaintiffs.*

*Order Appointing Receiver.*

Filed Nov. 18, 1899.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

CHARLES A. MAXWELL ET AL.	}	No. 20673. Eq.
vs.		
JOHN B. SANBORN ET AL.		

This cause coming on to be heard upon the motion of the complainants for the appointment of a receiver herein, it is, upon the consideration of the original and amended bills and the exhibits in support thereof, filed herein this 17th day of November, 1899, ordered that George H. Lamar be, and he is hereby, appointed receiver to receive from the Treasurer of the United States any moneys, warrant, check, or draft that may be or may become payable to the



defendants or either of them on account of services rendered to the scouts of the Sisseton and Wahpeton, Medawakanton and Wahpekootah bands of Sioux Indians, and to hold the same subject to the further order of this court; this order to become effective upon the filing by said receiver of bond with surety in the penal sum of five thousand dollars, to be approved by the court.

JOB BARNARD, *Justice*.

47

*Memorandum.*

November 18, 1899.—Bond of receiver filed.

*Motion to Vacate Order Appointing Receiver.*

Filed Nov. 18, 1899.

In the Supreme Court of the District of Columbia, Holding an Equity Court of said District.

CHARLES A. MAXWELL ET AL., Complain-	} In Equity. No. 20673.
ants,	
vs.	
JOHN B. SANBORN ET AL., Defendants.	

Comes now the defendant in the above-entitled cause, John B. Sanborn, by Davis & Tucker, his solicitors, appearing in said cause not generally, but for the sole purpose of questioning the jurisdiction of this court over his person, and moves the court to vacate and set aside the order passed in said cause November 17, 1899, appointing a receiver in said cause, upon the sole ground that process in said cause has not been served upon said defendant, and the court has, therefore, acquired no jurisdiction over his person.

DAVIS & TUCKER,  
*Attorneys for said Defendant, John B. Sanborn,  
for the Purpose of said Motion Only.*

48 Messrs. Douglass & Douglass and Andrew Y. Bradley, attorneys for complainants:

Take notice that the above motion will be called up for hearing on Wednesday morning next, November 22, 1899, in circuit court No. 2, Mr. Job Barnard presiding, at 9.30 o'clock, or as soon thereafter as counsel can be heard.

DAVIS & TUCKER,  
*Attorneys for said Defendant, John B. Sanborn,  
for the Purpose of said Motion Only.*

*Order Overruling Motion to Set Aside Order Appointing Receiver.*

Filed Jan. 4, 1900.

In the Supreme Court of the District of Columbia, Holding a  
Special Term in Equity.

CHARLES A. MAXWELL ET AL.	} No. 20673. Eq.
vs.	
JOHN B. SANBORN ET AL.	

This cause coming on to be heard upon the motion of the defendant Sanborn to vacate the order passed herein heretofore on the 17th day of November, 1899, appointing a receiver herein, and said motion, after argument, being duly submitted to the court, it is this 4th day of January, 1900, ordered that said motion be, and it is hereby, overruled.

By the court:

JOB BARNARD,  
*Associate Justice.*

49

*Receiver's First Report.*

Filed Jan. 23, 1900.

In the Supreme Court of the District of Columbia.

CHARLES A. MAXWELL ET AL.	} Equity. No. 20673.
vs.	
JOHN D. SANBORN ET AL.	

George H. Lamar, receiver in the above-entitled cause, makes his first report, as follows:

1. Pursuant to the order of his appointment, passed herein on the 17th day of November, 1899, he qualified by giving bond in the penal sum of \$5,000.00.

2. That he found due and owing the said John B. Sanborn, and in condition for present payment, without further appropriation by Congress, the sum of \$1,800.00, which said sum has been collected by your receiver and is now deposited to his credit as such receiver in the Central national bank.

And said sum is held subject to the further order of this honorable court.

GEORGE H. LAMAR, *Receiver.*

DOUGLASS & DOUGLASS,  
*Solicitors for Receiver.*

DISTRICT OF COLUMBIA, *To wit:*

I, George H. Lamar, on oath say that I have read the foregoing report by me subscribed and know the contents thereof, and that



cause, and that the above demurrer which is interposed to said bill of complaint is not interposed for delay.

JOHN B. SANBORN.

Subscribed and sworn to before me this 5th day of February, A. D. 1900.

[SEAL.]

OLIVER H. AMES,  
*Notary Public, Ramsey County, Minn.*

52

*Second Report of Receiver.*

Filed Jul- 21, 1900.

In the Supreme Court of the District of Columbia.

CHARLES A. MAXWELL ET AL.	} Equity. No. 20673.
vs.	
JOHN B. SANBORN ET AL.	

George H. Lamar, receiver in the above-entitled cause, makes his second report as follows:

(1.) In further execution of the trust imposed by the order of this honorable court, passed herein on the 17th day of November, 1899, he has succeeded in collecting from the United States Government, in addition to the \$1,800.00 heretofore reported, a draft payable to the undersigned, as receiver, for the sum of \$1,880.00, the same having been appropriated by the late session of Congress of the United States in an item in what is known as the Indian appropriation bill, as approved May 31, 1900.

(2.) That said draft on the United States Treasury for said additional amount has been deposited in bank to the credit of your receiver, as such, and such aggregated sum of \$3,880.00 is so held subject to the further order of this honorable court.

Wherefore, and because of the premises and the fact that there is no fund within the jurisdiction of this honorable court alleged to be coming to or believed to be due the said John B. Sanborn within the purview of said suit, authority is prayed from this honorable court for an allowance of such commission out of said fund

53 in hand as may be found to be proper compensation for the services performed by your receiver.

GEORGE H. LAMAR, *Receiver.*

DISTRICT OF COLUMBIA, *To wit:*

I, George H. Lamar, on oath say that I have read the foregoing report by me subscribed and know the contents thereof, and that the matters therein set forth as to my personal knowledge are true, and those set forth on information and belief I believe to be true.

GEORGE H. LAMAR, *Receiver.*

Subscribed and sworn to before me this 21st day of July, 1900.

J. R. YOUNG, *Clerk,*  
By F. W. SMITH, *Ass't Clerk.*

*Order Overruling Demurrer.*

Filed Oct. 29, 1900.

In the Supreme Court of the District of Columbia, Holding a Special  
Term in Equity.

MAXWELL AND CHASE	}	Eq. No. 20673.
vs.		
SANBORN AND KING.		

54 This cause coming on to be heard upon demurrer filed to  
the amended bill herein, and the same having been duly  
argued by counsel for both parties and considered by the  
court, it is this 29th day of October, 1900, ordered, adjudged, and  
decreed that said demurrer be, and the same is hereby, overruled,  
with leave to the defendants to file their answers herein within thirty  
days hereof.

By the court:

JOB BARNARD,  
*Associate Justice.*

*Allowance of Appeal.*

Filed Nov. 15, 1900.

In the Court of Appeals of the District of Columbia, October Term,  
1900.

JOHN B. SANBORN, Petitioner,	}	Equity. No. 20673.
vs.		
CHARLES A. MAXWELL and GEORGE S. CHASE, under the Firm Name of Maxwell and Chase.		

On consideration of the petition of John B. Sanborn for the allow-  
ance of a special appeal from an order of the supreme court of the  
District of Columbia entered herein on the 29th day of October,  
1900, it is now here ordered by the court that said appeal be, and  
the same is hereby, allowed.

By the court:

R. H. ALVEY,  
*Chief Justice.*

November 13, 1900.

A true copy.

Test: ROBERT WILLETT, *Clerk.*

[SEAL.]

55 In the Supreme Court of the District of Columbia.

CHARLES A. MAXWELL and GEORGE S.  Chase, as Firm of "Maxwell and Chase,"	} No. 20673. In Equity.
vs.	
JOHN B. SANBORN and CHARLES KING, as Firm of Sanborn and King, <i>et al.</i>	

The President of the United States to Charles A. Maxwell and George S. Chase, under the firm name of "Maxwell and Chase," Greeting :

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed in the Court of Appeals of the District of Columbia on the 13th day of November, 1900, wherein John B. Sanborn is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.	Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 15th day of November, in the year of our Lord one thousand nine hundred (1900).
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JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 16th day of November, 1900.

DOUGLASS & DOUGLASS,  
ANDREW Y. BRADLEY,  
*Attorneys for Appellee.*

56

*Memorandum.*

November 21, 1900.—Appeal bond filed.

57

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss :  
*District of Columbia,*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 56, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 20673, equity, wherein Charles A. Maxwell *et al.* are complainants and John B. Sanborn *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia. In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 26th day of November, A. D. 1900.

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 1042. John B. Sanborn, appellant, *vs.* Charles A. Maxwell *et al.* Court of Appeals, District of Columbia. Filed Jan. 3, 1901. Robert Willett, clerk.





COURT OF APPEALS,  
DISTRICT OF COLUMBIA.

FILED

FEB 13 1901

IN THE

COURT OF APPEALS  
CLERK.

OF THE

DISTRICT OF COLUMBIA.

JANUARY TERM, 1901.

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NO. 1042,

No. 6, Special Calendar.

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John B. Sanborn, Appellant,

vs.

Charles A. Maxwell and  
George S. Chase, part-  
ners as Maxwell & Chase,  
Appellees.

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Appeal from the Supreme Court of the District of  
Columbia.

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Supplemental Brief for Appellees.

APPLICATION OF SECTIONS 2103 AND 2106.

The proposition that Sections 2103 and 2106 of the Re-  
vised Statutes of the United States might have some ap-

plication to this case, came for the first time in the brief and argument at the hearing of this appeal. It was not anticipated in our brief, for the reason that it was not supposed any such contention would be put forward. The sections were not fully quoted in either the brief or the arguments. The opening clause of Sec. 2103 reads:

"No agreement shall be made by any person with any tribe of Indians or individual Indians *not citizens of the United States*, for the payment or delivery of any money," etc.

It will be seen that this statute applies only to the class of persons specially mentioned, i. e., *Indians who are not citizens*.

By the act of Congress approved Feb'y 8th, 1887, commonly known as the "general allotment act" (24 Stats. at Large 388) it is provided that any Indian born in the United States, who has taken land in severalty or has separated from his tribe and adopted the habits of civilized life, shall *ipso facto*, become a citizen of the United States; and under this provision most of the Indians have become citizens.

The word "Indian" is simply a term used in a generic sense to designate a person of that race, just as the words "negro," "Italian" and "German" are used to designate individuals of those nationalities, and might equally refer to an alien or to a natural born or naturalized citizen.

There is not a syllable in the bill or in the record to indicate that the contracts of the appellant and as to which appellees held their employment, were with the non citizen class, and counsel have no right to indulge such presumption. There is nothing to indicate that appellees' services were in connection with contracts existing under Sec. 2103.

and in fact (dehors the record) they were not. Counsel set up an unjustified and unwarranted assumption and base a long and laborious argument upon it. The questions so presented are such as can only be raised and inquired into on the merits.

Nor has the proviso to Sec. 27, 26th Stat. p 1038, anything to do with this case, at least at this time. This proviso simply restates the essence of Sec. 2103, and reiterates that which was the law already. It is as follows:

“Provided, however, that all contracts or agreements between said Indians or any of them, and agents or attorneys or other persons for the payment of any part of this appropriation for or on account of fees or compensation to said agents, attorneys or other persons, unless the same have been made as provided by law and are yet in force and have been approved by the Department of the Interior, or have been *by and between citizens of the United States*, are hereby declared null and void; and in such cases the Secretary of the Interior shall cause all moneys herein appropriated to be paid directly to said Indians and shall pay no portion of the same to their said agents or attorneys.”

26 U. S. Statutes at Large, 1038.

There is absolutely nothing save the unjustified assumption of counsel to indicate that this has any reference to the matters involved in this suit. If it suggests anything at all, it is that at least *some* of the Indians in question were citizens in 1890, and as a fact of history and the public records, they *all* were.

A few words of explanation concerning the status of citizen Indians seem to be made necessary by the injection of

this question into the case. Most of the Indians, though having taken lands in severalty and thereby become citizens, retain their tribal organizations, and frequently hold large tracts of land in common and by community title (see agreement with Kiowas, Comanches and Apaches, ratified by Congress at the last session—Statutes of the U. S., passed at first session of the 56th Congress, page 676) and as to such lands the government deals with them as tribes or bands though their personal status is that of citizens.

Such was the case with the Sissetons and Wahpetons in 1889, when the agreement referred to in the record (page 18, section 4) was made. By an inadvertent use of terms, the bill (page 18, section 4) speaks of a "treaty" having been negotiated between the United States and the Sisseton and Wahpeton bands of Sioux Indians. The word should have been "agreement," as no "treaties" with Indians have been made since 1871, Congress in that year having prohibited the making of any further treaties (see Revised Statutes, sec. 2079) since which time only "agreements" have been made; and by reference to 26th statutes at large, p. 1036 it will be seen that this was an agreement, and not a treaty. It is so denominated in the instrument itself and in the act by which it was ratified, said instrument, after the preamble, beginning as follows:

"Now, therefore, this *agreement*, made and entered into," etc., and the act of ratification beginning (*idem*, p. 1038), "Sec. 27—For the purpose of carrying out the terms and provisions of said *agreement*," etc.

#### ATTORNEYS LIEN.

If the remarkable proposition laid down by counsel that a lien can only exist as to a tangible thing of which one can

take manual possession, and not as to rights in action, then what becomes of the whole question of attorneys' liens? What becomes of the large and important class of liens of attorneys in personal damage suits? How did Mr. Worthington manage to acquire and hold his lien in the case of *Hutchinson V. Worthington*, 7 D. C. Appeals, 548, already cited?

"It" (the attorney's lien) "is properly denominated a lien in the broad sense of the term but it has few points of resemblance to the ordinary lien upon tangible property. *It does not in any way depend upon possession*, but rests in the equity of the attorney's claim, to be repaid out of the proceeds of a judgment," &c.

Even if it could be maintained that no lien was created (which it cannot) complainant would still have a clear right to the relief prayed in this bill, by injunction and a receiver under the authority of *Price v. Forrest*, *Droop v. Ridenour* and other cases cited in our original brief.

"The attorney may take the money *in transitu* if he can lay hold of it. If he apply to the court *they will prevent its being paid over till his demand is satisfied.*" *Adams vs. Fox*, 40 Barb. 447, quoting Lord Mansfield in *Welsh vs. Hale*, 1 Doig, 287.

"The lien of an attorney upon a judgment which has been recovered by his industry and at his expense for his fees and advances is founded in strong equity and justice and recognized very generally wherever the common law is known."

*Shapley vs. Bellows*, 4 N. H., 353.

*Martin vs. Hawks*, 15 Johns., 405.

*Baker vs. Cook*, 11 Mass. Rep. 236, 2 N. H. Rep. 542.

The case of *Ball v. Halsell*, and other cases dwelt upon by counsel are wholly inapplicable to this case, because they refer to cases *against the United States*, whereas these cases never were against the United States, but against certain Indians, the government being simply asked to make payment out of funds held by it as trustee, and which it finally did, by reason of the efforts of these complainants.

The senior counsel for appellant is deeply concerned over the great principle "lying at the foundation of this case," fearing that in the "confusion of ideas" exhibited by appellees' counsel the court may be in danger of establishing the doctrine that one attorney in a case can acquire a lien upon the fees belonging to his co-attorney, and thus the courts of this District become the resort of disagreeing attorneys from all over the country in cases wherein the funds are disbursable by the government.

We fail to find anything in the record to justify the assumption that these appellees were simply co-attorneys with appellant as to the matters wherein they had been employed by him. It appears from the amended bill that the defendant Sanborn had failed to complete his service for said Indian scouts, upon which his fees depended, and therefore came to Washington and *employed* appellees to complete that service for him, and to further *represent him* in the matter of the collection of his fees. The principal charge will be found in paragraph 5 of the bill (Record, p. 19) as follows:

"That early in the said session of Congress, to-wit, in the month of December, 1890, said defendant Sanborn entered into a verbal contract with complainants, whereby said Sanborn employed complainants, and the said complainants agreed to perform certain legal services in connection with

the preparation of the case of the said Indian scouts for presentation to the committees of Congress; to appear *for the said Sanborn* before such committees; in fine to represent the case of said Indians *and of the said defendant Sanborn* in connection with the pending legislation, and in all matters pertaining thereto," etc.

In other words, the relation of client and attorneys existed between Sanborn on the one side and Maxwell and Chase on the other. Does counsel find anything singular in the fact of attorneys having an attorney for a client? Are not both parties to this suit attorneys, and are not both sides represented by counsel? If, unhappily, upon the termination of this suit, appellant should conclude not to pay his attorneys, as he did in the case of these appellees, and Messrs. Davis & Tucker should thereupon find it necessary to begin proceedings to subject the surplus funds in the hands of the receiver in this case to the payment of their reasonable fees and charges, would they then admit the contention that inas much as Sanborn is an attorney and this fund arises from fees, that therefore no relation of attorney and client could exist between him and them? We apprehend not. Yet the cases are distinctly parallel, except that in the case at bar, appellees have the added equity of having also, by their services as attorneys, been mainly instrumental in creating the fund in question, and out of which appellant has received in cash, nearly sixty thousand dollars.

DOUGLASS & DOUGLASS,  
ANDREW Y. BRADLEY,

For Appellees.